

Small Business Administration

§ 127.504

Amendment of the Constitution. Where an agency seeks to reserve a procurement for competition exclusively among WOSBs or EDWOSBs within an industry designated by SBA in paragraph (a)(3) of this section, the agency must conduct an appropriate analysis of the agency's procurement history and make a determination of whether there is evidence of relevant discrimination in that industry by that agency.

§ 127.502 How will SBA identify and provide notice of the designated industries?

SBA will post on its Internet Web site a list of 4-digit NAICS Industry Subsector industries it designates under § 127.501(a). The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

(a) *EDWOSB requirements.* For requirements in industries designated by SBA pursuant to § 127.501, a contracting officer may restrict competition to EDWOSBs if the contracting officer has a reasonable expectation based on market research that:

- (1) Two or more EDWOSBs will submit offers for the contract;
- (2) The anticipated award price of the contract (including options) does not exceed \$5,000,000, in the case of a contract assigned an NAICS code for manufacturing; or \$3,000,000, in the case of all other contracts; and
- (3) Contract award may be made at a fair and reasonable price.

(b) *WOSB requirements.* If market research indicates that the criteria in paragraph (a) are not met for restricting competition to EDWOSBs, then the contracting officer may restrict competition to WOSBs if:

- (1) The requirement is in an industry that SBA has designated as substantially underrepresented with respect to WOSBs; and
- (2) The contracting officer has a reasonable expectation based on market research that—
 - (i) Two or more WOSBs will submit offers;

(ii) The anticipated award price of the contract (including options) will not exceed \$5,000,000, in the case of a contract assigned an NAICS code for manufacturing, or \$3,000,000 in the case of all other contracts; and

(iii) Contract award may be made at a fair and reasonable price.

(c) *8(a) BD requirements.* A contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program.

(d) *Contract file.* When restricting competition to WOSBs in accordance with § 127.503(b), the contracting officer must document the contract file accordingly, including the type and extent of market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as a substantially underrepresented industry with respect to WOSBs.

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must ensure that the appropriate representations and certifications on ORCA are accurate and complete at the time it submits its offer to the contracting officer, including, but not limited to, the fact that:

- (a) It is small under the size standard corresponding to the NAICS code assigned to the contract;
- (b) It is listed on CCR and ORCA as an EDWOSB or WOSB;
- (c) There has been no material change in any of its circumstances affecting its EDWOSB or WOSB eligibility; and
- (d) It will meet the applicable percentages of work requirement as set forth in § 125.6 of this chapter (limitations on subcontracting rule).